IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.741 OF 2003

Shri D.K. Rajepandhare,
Ex-Joint Civil Judge,
Junior Division and
J.M., Satara
at present residing at
Judicial Quarter C/2,
Near Remand Home, Sadar Bazar,
Satara - 415 001. .. .. Petitioner

Versus

1. State of Maharashtra
(summons to be served on the learned Additional Government Pleader appearing for State of Maharashtra under Order XXVII, Rule 4, of Code of Civil Procedure,1908).

2. The Honourable High Court of Judicature at Bombay (summons to be served on the learned Registrar, High Court of Judicature at Bombay, Appellate Side, Bombay. .. .. Respondents

Mr.A.V. Anturkar for petitioner.

Mr.C.J.Sawant, Senior Advocate with Mr.S.R.Nargolkar, AGP and Mr.R.M. Patne, AGP for respondents.

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**CORAM : H.L. GOKHALE &**
**S.P. KUKDAY, JJ.**

**DATE OF RESERVATION OF JUDGMENT : 17th June 2005**

**DATE OF PRONOUNCEMENT OF JUDGMENT: 26th July 2005**

**JUDGMENT : (Per H.L. Gokhale, J.)**

1. This writ petition filed by a former Joint Civil Judge, Junior Division and Judicial Magistrate, seeks to challenge the order dated

19th December 2002 passed by the Government of Maharashtra compulsorily retiring him after a disciplinary enquiry and a recommendation of the High Court to that effect. The respondents to this writ petition are the State of Maharashtra and the High Court of Bombay through its Registrar, respectively.

2. The short facts leading to this writ petition are as follows:-

. The petitioner joined as a Civil Judge, Junior Division on 13th December 1982. During the course of his service, he was transferred from place to place. When he was posted at Satara he received a chargesheet dated 14th September 2000 for certain acts of misconduct committed by him when he was a Civil Judge, Junior Division and Judicial Magistrate at Yeola in District Nashik from June 1994 to May 1997. The charges were principally three-fold.

. (i) Firstly, he was charged that during that period he granted bail to the accused persons in two cases viz. CR No.2 of 1995 of Yeola City Police Station and CR No.2 of 1995 of Yeola Taluka Police Station, even though the offences were

triable by the Court of Sessions and that too after the Court of Sessions had rejected the earlier applications for bail on merits and that this was done deliberately overlooking the observations of the Sessions Court. He had passed these orders for consideration other than judicial by resorting to corrupt practices.

. (ii) The second charge was that he behaved in a vindictive manner with one Advocate Shri V.R. Gaikwad practising at Yeola with a view to harass him.

. (iii) Thirdly, he did not follow the proper procedure while dealing with the criminal matters, particularly those arising under Section 125 of the Criminal Procedure Code and in issuing warrants in criminal cases.

3. (i) The petitioner was served with the imputation of charges. In the imputation there was a reference to a third case of granting bail in a case under Section 302, Indian Penal Code being C.R. No.30 of 1995 of Yeola Police Station. The petitioner filed his Written Statement dated 7.11.2000 denying all these allegations and disputing that any case for misconduct was made

out. In his submission, there was no corrupt practice involved and his orders were judicial orders which had to be looked at as such, and could not be a basis for a departmental action, assuming that they were wrong orders. He denied vindictiveness against Advocate Gaikwad or not following the correct procedure.

. (ii) Thereafter, evidence was led in the Departmental Enquiry. Apart from producing various documents, Advocate Gaikwad was examined in support of the charges. The delinquent filed a pursis that he did not want to lead any oral evidence but filed his statement of defence. Thus, after giving an opportunity to the petitioner and considering the material on record, the Enquiry Officer one Shri S.P. Hayatnagarkar, the then Additional District and Sessions Judge at Nashik, submitted his report of inquiry on 30th April 2002.

4. The report was placed before the Disciplinary Committee of the High Court which decided to accept the same and issued a Show Cause Notice dated 9th July 2002 asking the petitioner to show cause as to why a major penalty should not be imposed against him. The petitioner filed two

replies on 12th September 2002, and then on 19th September 2002 but that was not found to be satisfactory and hence, the Disciplinary Committee of the High Court decided to recommend the order of compulsory retirement. The decision of the Disciplinary Authority reads as follows:-

" Discussed.

Having considered the representations of delinquent Judicial Officer dated 12.9.2002 and 19.9.2002 in response to the show cause notice issued to him in the above mentioned file, in light of material available on record and report of the Enquiry Officer, it was decided to reject the representations of the delinquent Judicial Officer and to accept findings recorded by the Enquiry Officer as the same are well founded.

Looking to the gravity of the charges proved, it was decided to impose upon the delinquent judicial officer major penalty of compulsory retirement from service as prescribed under rule 5(1)(vii) of the Maharashtra Civil Services (Discipline and

Appeal) Rule, 1979. "

The State Government accepted the recommendation and thereafter passed the order of compulsory retirement on 19th December 2002 which is under challenge in the present petition.

5. (i) The petition was filed on 5th January 2003 but does not appear to have been moved for nearly two and half years after the same was rightly removed from the Board of Hon'ble Chief Justice on 10th February 2003. After the matter was mentioned and listed before this Bench, the petition was allowed to be amended twice. Mr.V.R. Kingaonkar, Registrar (Legal), High Court, Appellate Side, has filed a reply affirmed on 8th June 2005 opposing the reliefs in the petition. The reply denies the allegations in the petition and submits that penalty has been imposed after a due departmental enquiry. It is contended that the findings of the Disciplinary Authority are determinative, the petitioner was given full opportunity during the inquiry, and that a second personal hearing at the stage of Disciplinary Authority is not permissible under the rules. It is, however, submitted that there is an alternative remedy of seeking a review under Rule

25A of the Maharashtra Civil Services (Discipline and Appeals) Rules, 1979 (hereinafter referred to as "the MCS Rules").

(ii). Mr.Anturkar, learned Counsel appearing for the petitioner, made a request that though the petition is listed for admission, the same may be heard finally at the stage of admission itself considering that the career of a Judicial Officer is at stake. Mr.Sawant, learned Counsel appearing for the respondents, did not oppose the request and hence, the petition is heard finally.

6. As far as the preliminary submission with respect to the availability of an alternative remedy of review is concerned, Mr.Anturkar submitted that the recommendation in this matter was by the High Court and then the impugned order was passed by the State Government. The Government is certainly not expected to review the order in such a situation. He submitted that even if the relevant rule is read to mean a review to the High Court on the administrative side, inasmuch as a Disciplinary Committee of the Hon’ble Chief Justice and the Senior Judges had taken the decision on administrative side, it would be desirable that the High Court examines

the challenge to the order on the judicial side rather than sending the petitioner for the review. We are in agreement with the submission of Mr.Anturkar. In any case, the rule of exhaustion of internal statutory remedies is a rule of self limitation and in appropriate cases the High Court may not insist on exhaustion of this alternative remedy. This view has been taken by the Apex Court in a number of judgments and in the present case also, we feel that it will not be advisable to drive the petitioner to seek a review.

7. The submissions of Mr.Anturkar were broadly twofold. (A) Firstly that, the impugned order was not called for in the facts of the case and that the legality of a judicial order or propriety thereof cannot be subject of a departmental inquiry. (B) Secondly, he submitted that the action against the petitioner was in breach of relevant Rule 9(2) of the MCS (Discipline & Appeal) Rules.

8. For examining the first submission of Mr.Anturkar, we turn to the three charges which were levelled against the petitioner. The first out of them was the most serious one, namely, granting orders of bail in cases where the

petitioner did not have jurisdiction and when bail applications were rejected by the Court of Sessions and that this was done by resorting to corrupt practices. We shall advert to this charge a little later. As far as the other two charges, namely, being vindictive to Advocate Gaikwad, practising in the Court of Yeola and not following the proper procedure in criminal matters, particularly under Section 125 of the Code of Criminal Procedure, the same are somewhat interconnected. This is because it is this Advocate Gaikwad who had complained against the petitioner of not following the correct procedures.

9. (i) It is material to note that whereas the two cases referred in charge No.1 (i.e. granting bail when the petitioner had no jurisdiction) are both cases of the year 1995, Mr.Gaikwad had made complaints to the District Judge prior to both these cases. The accused in these two cases were arrested on 8th and 9th January 1995, respectively. Mr.Gaikwad had made complaints to the District Judge of vindictiveness on the part of the petitioner and of not following the correct procedure on 9th December 1994 and 30th December 1994. The first complaint contained

in all 21 grievances. Thus Mr.Gaikwad had pointed out that in two Recovery Applications bearing Nos.112/1994 and 143/1994 filed under Section 125 of Cr.P.C., the delinquent proceeded straightway to issue non-bailable warrants against the non-applicants without verifying the service of summons and as to whether the accused-respondents were purposely not remaining present and avoiding payments. Mr.Gaikwad was appearing for the respondents in these matters. The Enquiry Officer examined the record of the two proceedings and found that though the orders state that the non-applicant was avoiding to deposit the money, there was nothing on record to show as to how much amount was due from the non-applicant and how the warrants were justified. This is seen from paragraphs 61 to 64 of the report. In all such cases, a summons is expected to be issued to the non-applicant first. If the non-applicant fails to comply with the summons or order, then the Magistrate may issue warrant. Mr.Gaikwad cited these cases as examples of not following the proper procedure.

(ii). Secondly, it is also seen that the delinquent used to resort to send summons by Registered Post. This was obviously contrary to

the provisions of Sections 61 to 69 of Chapter VI of Code of Criminal Procedure. In all such matters, the summons is to be first served on the person concerned by the Police officer or by a Court officer under Section 62 and failing that, to be affixed on the conspicuous part of the house of the accused as provided under Section 65. The delinquent tried to defend his actions as stated above by saying that the accused were not paying the amounts and there was nothing wrong in issuing notices by Registered Post.

(iii). Obviously, on both these counts, the procedures adopted by him were contrary to the provisions under Section 125 read with Sections 61 to 69 of Chapter VI of the Code of Criminal Procedure and the finding of the Enquiry Officer is correct.

10. (i) As far as the third charge of harassing Mr.Gaikwad is concerned, Mr.Gaikwad mentioned some specific instances. Thus, for example, he had applied for certified copy of the bail application and the order passed in C.R. No.30 of 1995 i.e. the case against one Gopal Agarwal and the learned Judge refused to give a copy thereof. The delinquent stated that the

application was rejected because it was vague. This explanation was accepted by the Enquiry Officer.

(ii). There were some other instances also with respect to not recording the evidence correctly, or not entertaining the application or to proceed ex-parte in the matter of Mr.Gaikwad.

(iii). But the worst case is Summary Case No.366 of 1996 (Pramod Saskar vs. Soma Patil). This Pramod Saskar was supposed to have been beaten up by the respondent-accused who was a Police Constable (Buckle No.1244) attached to the City Police Station Yeola. This Constable had apprehended the tempo of Saskar on 6.9.1994 on the ground of infringement of some traffic rules. It was being run by complainant's driver one Ashok R. Jorvakar. The complaint of this Saskar was that the accused demanded illegal gratification from the driver, but that was not provided. When the complainant went to the Police Station, he was abused and assaulted. He lodged a complaint with P.S.I. Dhole of the same Police Station who asked him to approach the Criminal Court. The complaint was filed on 15.9.1994. The delinquent directed an enquiry and report under Section 202 of

Criminal Procedure Code. Mr.Gaikwad, who was appearing for the complainant, submitted that the enquiry and the report ought to have been obtained from some other Police Station since the accused was a constable at the concerned Police Station. The complaint was dismissed on receiving the report from the concerned Police Station. The matter was carried in Revision No.6 of 1995 and the Revision was allowed by the 2nd Additional Sessions Judge, Nashik, who accepted the submission of Mr.Gaikwad that the enquiry ought to have been directed to some other Police Station and the lower Court had accepted the report blindly. Mr.Anturkar defended the order of the delinquent as the case of a wrong order, at the highest.

11. In his defence, the delinquent made the allegations of mala fides against Mr.Gaikwad by pointing out that there were criminal and civil cases pending against Mr.Gaikwad in his Court. Thus, he referred to Criminal Cases Nos.114/96, 116/96, 227/97, 231/97 and 232/97. Mr.Anturkar submitted that the complaint of vindictiveness was made with a view to pressurise the delinquent. Mr.Gaikwad, however, had pointed out in the enquiry that these were false cases filed against

him with the help of some Lawyers and they were filed to create record in the defence of the delinquent. He had further pointed out that later on all those cases were withdrawn unilaterally by the complainants. The delinquent had pointed out that there were certain civil cases and execution proceedings against Mr.Gaikwad. Thus, Civil Suit Nos.106/96 and 105/96 are mentioned as well as Regular Darkhast Nos.17/87 and 17/94. Now, what is material to note is that this darkhast arising out of suit of 1987 is prior to the complaint of Mr.Gaikwad and much prior to the delinquent being posted to the Court in Yeola in 1994. The other suits are much subsequently filed. We are, therefore, of the view that the complaint of Mr.Gaikwad cannot become frivolous or mala fide merely on that ground. The Enquiry Officer rightly held that Mr.Gaikwad was undoubtedly being harassed.

12. As noted above, the charge No.1 is granting bail in two sessions case overlooking the fact that the sessions Court had rejected the bail application of the accused. The first out of two cases was C.R.No.2 of 1995 of the City Police Station of Yeola where the two accused Sanjay Gopalrao Pingale and his mother Savita were

arrested on 9th January 1995 for offences under Sections 302 and 498A read with Section 34 of Indian Penal Code for the suspicious death of Laxmi, wife of Sanjay. From the record of the enquiry, it is seen that Savita did not apply for bail in the sessions Court. She did apply for bail before the delinquent on 16.1.1995. In her application, it was stated that she was an old lady having the problem of blood pressure. She was already in police custody for six days. She is required to look after the children. She will not tamper with the record and hence, be released. The application was resisted by the prosecution by stating that the case was exclusively triable by the sessions Court and the investigation was in progress. The delinquent, however, accepted the submission of Savita that she was an old lady. He noted that she was involved in a case exclusively triable by the Court of sessions and punishment would be that of death or life imprisonment. Yet he released her on bail on the PR bond of Rs.5,000/- with two sureties by passing an order under the proviso to Section 437 of Criminal Procedure Code. This order was passed on 16.1.1995.

13. Sanjay applied for bail in the sessions

Court through Bail Application No.30 of 1995. Both the accused had been initially remanded to police custody till 16th January 1995. The application of Sanjay came for consideration before the sessions Court at Nashik on 21st January 1995. The learned sessions Judge noted that the accused were facing the charge of murdering Laxmibai by setting her fire in their latrine. The applicant was married to Laxmi on 14th May 1993 and within less than two years, this incident had occurred. She had delivered a male child and was being ill-treated for not bringing precious articles from her parents' house. It was the case of the prosecution that earlier also an attempt was made to kill her by administering poison. The possibility of suicide was ruled out by the Sessions Judge and he rejected the bail application of Sanjay on 21st January 2005. Sanjay moved a second bail application being Bail Application No.54 of 1994 before the sessions Court on 3rd February 1995.

14. During the pendency of this second bail application, Sanjay preferred another bail application before the delinquent on 10th February 1995 and withdrew the bail application in the sessions Court on 14th February 1995. It was

submitted on behalf of the accused that the investigation had been completed which was contrary to the record. It was pointed out that he had one year old son and nobody was there to look after him. It was, therefore, not desirable to detain him in custody. The delinquent observed in his order that the only contention of the prosecution was that the alleged offence was exclusively triable by the Court of sessions. He accepted that objection but all that he stated in justification of grant of bail was that it was not necessary to detain him in jail. The exact sentence in the order giving the only reason for release of Sanjay is as follows:-

> " I do agree that the alleged offences are exclusively triable by the Court of sessions but that does not mean unnecessarily the accused should be detained in jail."

Now, what is material to note is that the delinquent knew that he had already released the mother of Sanjay, which order he had passed on 16.1.1995. She was undoubtedly available to look after the child of Sanjay. The only reason given in the order is that it was unnecessary to detain

Sanjay when the investigation was still not completed. As far as Section 437 of Criminal Procedure Code is concerned, a bail in the non-bailable offences cannot be granted by a Court other than the High Court or a Court of sessions. The first proviso in Section 437(1) is the only provision which contains the exceptions, namely, that such a Court may grant bail if a person is under the age of 16 years or is a woman or is sick or infirm. These are the only grounds which are available. None of the grounds was made out in the case of Sanjay and yet the delinquent, who did not have jurisdiction to grant bail, granted it to Sanjay, which order was clearly outside his jurisdiction.

15. In the second case viz. C.R.No.2 of 1995 of the Rural Police Station of Yeola, one Baban Bolij and his mother Satyabhama were arrested on 8.1.1995 under the same sections viz. Section 302 read with Sections 498A and 34 of Indian Penal Code. They were remanded to police custody till 13.1.1995. In this matter, there was a dying declaration of the deceased that she was done away with by pouring kerosene on her on 7.1.1995. This dying declaration was recorded before the Special Judicial Magistrate, Nashik. In this matter,

first, a joint application for bail of both the accused was presented before the delinquent. He allowed it partly on 16.1.1995 and the accused-Satyabhama was released on bail on 16.1.1995. Accused-Baban moved Bail Application No.45 of 1995 before the Sessions Court at Nashik. The Sessions Court rejected this application on 7th February 1995. It noted that the other accused i.e. mother-in-law of the deceased was already released by the lower Court on the ground of feminity. The sessions Court further noted that there was a dying declaration and it in terms observed that Satyabhama was released on the ground of feminity and, therefore, ground of parity was not available. The sessions Court thereafter observed that even Satyabhama ought not to have been released and the dying declaration involves the present applicant fully and completely. The sessions Court, therefore, rejected the bail application. Baban moved another bail application before the delinquent on 2nd March 1995 wherein it was stated that the accused had a daughter of 10 months and he should be released to look after her. The Assistant Public Prosecutor objected to it by pointing out that the offence was exclusively triable by the Court of Sessions, investigation was in progress and the report of

the Investigating Officer must be called and further that the chargesheet was not yet filed. The learned Judge noted this in his order dated 18th March 1995. He noted the submissions of the Counsel for the accused that the accused had made out a new ground that he was ill and suffering from hyper acidity. In the reasons given by him he stated that "the accused required regular medical treatment. The investigation was over. Another accused was already released" and, therefore, this accused was released on PR bond of Rs.5,000/- with two sureties. Now, it is material to note that here the learned Judge recorded that the investigation was over which was contrary to the record. Besides, he noted that another accused was already released on bail. The Judge knew that he had released the mother-in-law of the deceased on the ground of feminity. That could not be the justification for the release of the accused-husband. Yet he passed the order of bail.

16. In the imputation, another case has been mentioned where one Gopal Agarwal, a businessman from Jalgaon was the accused. He was charged under Section 302 of Indian Penal Code and arrested on 8th March 1995. He moved a bail application in the sessions Court at Nashik on

22.3.1995, but did not press it. He moved a bail application before the delinquent on 31.3.1995 on medical ground and was released on 3rd April 2005. It is material to note that when this third application was pending before the delinquent, Mr.Gaikwad, Advocate, had already made a complaint to the sessions Court and pointed out that this Gopal Agarwal was likely to be released by the delinquent.

17. Mr.Anturkar, learned Counsel appearing for the petitioner, submitted that the fact that the bail applications of the two accused in the cases of bride burning were rejected by the sessions Court, was not brought to the notice of the delinquent. At the most, his order can be stated to be erroneous one, but one cannot attribute corrupt practice for these orders. Now, what is material to note is that there is a common modus operandi emerging in both these matters. The delinquent released the mother-in-law of the deceased in both the matters first on the ground of feminity. Later on, he released accused-Sanjay in the first case by saying that it was unnecessary to detain him. Now, there is no such ground available under Section 437 of Criminal Procedure Code. In the second case, he released

accused-Baban on the alleged medical ground while stating at the same time that co-accused is already released. Now, surely, he knew why the mother-in-law was released and there could be no parity between the two. This was not a case of crime like dacoity wherein the role of every accused is similar and if one releases one accused on bail, he may release the other on the ground of parity. In both these cases the mother-in-law was released only on the ground of age and on the ground of feminity. She was undoubtedly available to look after the child. In the second case there was a dying declaration of the deceased. In both cases, young married women were burnt to death within a short time after their marriage leaving behind tender children. In both the cases, it is not reflected from the orders that the chargesheets were filed so as to infer that the investigation was completed. The orders were, therefore, totally unsustainable on merits. As far as the order in the case of Sanjay is concerned, it is not even sustainable under the first proviso to Section 437(1) of Criminal Procedure Code. This is apart from the fact that the learned Judge undoubtedly knew that the offences were triable by the Court of sessions and he had no business to grant the bail. It is no

use for him to contend that nobody had brought to his notice that bail applications of the accused-husbands had been rejected by the sessions Court. Knowing that these matters were triable by Court of sessions and also knowing that more than one month had gone in the first case after the date of arrest and more than two months had elapsed in the second case, he himself ought to have asked the Advocate as to whether any application had been moved in the Court of sessions and if so, with what result. That should have been reflected in the order itself. This is because that would be the normal conduct of such accused where the offences are triable by the Court of sessions. This is not reflected in either of the two cases. It is, therefore, not possible to give him any benefit of doubt as claimed by him that nobody pointed out to him that the sessions Court had rejected the prior bail applications of the two accused. It is very interesting to note that in the case of Gopal Agarwal, Mr.Gaikwad had brought to the notice of the sessions Court in advance that the delinquent was likely to be released by the delinquent and that is what happened subsequently. This is reflected in paragraph 55 of the Enquiry Report.

18. Now, could it be said that these orders of bail were innocent orders ? Or mere mistakes or wrong orders ? The delinquent was appointed as a Judicial Magistrate way back in December 1982. He was already a Magistrate for more than 12 years and a number of matters of these types must have come before him. Surely, he knew what was the law and what was expected of him. It is no use for him to contend as is contended by Mr.Anturkar, that these orders should have been challenged in appeal or revision or that the accused were subsequently acquitted in trial. We are concerned with the conduct of the delinquent when he granted the bail to the two accused-husbands. The Enquiry Officer has, therefore, come to the conclusion in paragraph 58 of the enquiry as follows:-

> " 58. From the above detailed discussion, there emerges the circumstances to believe that the delinquent officer Shri D.K. Rajepandhare has applied the consideration otherwise than the settled legal norms and procedure while releasing the accused on bail in the serious matters which are exclusively triable by the Court of Sessions, and has not properly applied his judicial mind while passing such orders

> although it may not be a case of overlooking of bail matters. Successive repetition of the same act or action, taking recourse to no knowledge gives rise to suspicion about the intentional or deliberate act. The mole of corrupt practice cannot have a direct evidence because the person benefited will not come forward to depose against his own interest. It has to be judged from the circumstances coming on record. Thus, the charge No.1 is proved to the extent of the delinquent officer was adopting or passing orders on bail applications for consideration other than judicial consideration. It has a tinge of suspicion or scope for consideration that it might be by resorting to illegal practices. So I answer point No.1 in affirmative accordingly. "

19. Mr.Anturkar, learned Counsel appearing for the petitioner, submitted that the legality of a judicial order or propriety thereof cannot be subject of a departmental enquiry. He pressed into service a judgment of the Apex Court in the case of **Zunjarrao Bhikaji Nagarkar vs. Union of**

**India & others reported in (1999) 7 S.C.C. 409**. This Shri Zunjarrao was the Collector of Central Excise, Nagpur, at the relevant time. The allegation against him was that although he passed an order in original in the matter against a party holding that the assessee had clandestinely manufactured and cleared the excisable goods and had willfully evaded the excise duty because of which he ordered confiscation of the goods, yet he failed to impose the penalty and thereby favoured the party. This charge was under challenge. It is material to note that in that matter although there was an allegation that the appellant was in error of not having imposed the penalty, there was no allegation of any corrupt motive or familiarity with the party. The Apex Court observed, at the end of para-40 of this judgment, that this was a case where during the course of the adjudication by the appellant imposition of penalty was imperative. At the same time, the Court observed that there was nothing wrong or improper on the part of the appellant to form an opinion that the imposition of penalty was mandatory. The Court observed that a wrong interpretation of law cannot be a ground for misconduct. Of Course, it is a different matter altogether if it is deliberate and actuated by mala fides. It is in this context

that the Court observed later on in paragraph 43 that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi-judicial officers like the appellant and, therefore, the chargesheet came to be quashed.

20. Now, as can be seen, the facts of that case and the present case are quite different. In the case of Zunjarrao (supra), he did proceed with the adjudication and passed the order confirming the excise duty holding that the goods were liable for confiscation but since they were released provisionally on a bond for the full value of the goods, he appropriated the amount of Rs.10,000/- in lieu of confiscation. He further ordered confiscation of another consignment of goods but allowed them to redeem on payment of Rs.10,000/-. He, however, did not deem it fit to impose penalty. An appeal was preferred against that order and the appeal was pending under consideration. Thus, it was clearly a case of error which, of course, was being corrected in appeal. It could not be pointed out that it was deliberate nor could it be said to be a case arising out of ignorance of law. In the present case, the delinquent undoubtedly knew what was the

law. He knew that both the cases were triable by the Court of sessions. He also knew that a heinous crime had been committed in both the matters. He had himself released on bail the mother-in-law of the deceased in both the cases. In the case of Sanjay, he released him thereafter by saying that it was unnecessary to detain him. There is no such ground available under the first proviso to Section 437(1) of Criminal Procedure Code. In the second case of Baban, he released him on medical ground which, on the face of it, was untenable. In that matter there was a dying declaration which involved both the accused. The delinquent knew that the cases were triable by the Court of sessions and he had a very limited jurisdiction. It was brought to his notice that the chargesheets had not been filed and yet he came to the conclusion of his own that the investigation was complete. In the third case of Gopal Agarwal, the complainant - Advocate Gaikwad had brought to the notice of the learned sessions Judge that the delinquent will release him on bail and that is what happened. Therefore, it is not possible to accept all these orders of the delinquent as innocent orders. A Judicial Magistrate, with 12 years standing, knows the law and if in heinous crimes he passes orders of the

type which he passed without giving any justifiable reasons, obviously an inference will have to be drawn that this was for some other considerations. It is also material to note that the two orders mentioned in charge No.1 have come one after another and so also the third one which is mentioned in the imputation of the charges. There is thus some kind of modus operandi in the manner in which the delinquent was functioning and his integrity could not be said to be beyond doubt.

21. It is material to note that in the above-referred case of Zunjarrao Nagarkar (supra), the Apex Court referred to paragraph 13 from the case of **M.S. Bindra vs. Union of India reported in (1998) 7 S.C.C 310**. The relevant observations from this paragraph read as follows:-

> " To dunk an officer into the puddle of 'doubtful integrity', it is not enough that the doubt fringes on a mere hunch. That doubt should be of such a nature as would reasonably and consciously be entertainable by a reasonable man on the given material. Mere possibility is hardly sufficient to assume that it would

> have happened. There must be preponderance of probability for the reasonable man to entertain doubt regarding that possibility. Only then there is justification to ram an officer with the label ‘doubtful integrity’. "

22. Another judgment on the subject of misconduct in the case of **State of Punjab vs. Ex-Constable Ram Singh reported in (1992) 4 S.C.C. page 54** is quoted with approval in paragraph 29 of Zunjarrao’s case (supra). This paragraph 29 reads as follows:-

> " 29. In **State of Punjab v. Ex-Constable Ram Singh** this Court referred to the definition of "misconduct" as given in Black’s Law Dictionary and Aiyar’s Law Lexicon and said as under: (SCC p.58, para 6)
>
> "6. Thus it could be seen that the word "misconduct" though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of

> the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the term occurs, regard being had to the scope of the statute and the public purpose it seeks to serve. "

23. (i) Thus, as far as charge No.2 is concerned, although it is proved, perhaps it is possible to take a view that since Mr.Gaikwad was practising in that Court, perhaps there was some tiff between him and the delinquent in view of some of the orders that were passed by the Judge and which were not to his liking. It is perhaps, therefore, possible to say that such incidents are likely to occur in a taluka place where a lawyer is regularly practising and that the Judge should not be made to suffer on that account and

vindictiveness should not be inferred.

(ii). Similarly although charge No.3 is also proved, the issuance of non-bailable warrants at the outset in proceedings under Section 125 of Criminal Procedure Code or sending summonses by Registered Post and not through the Police Officer or Court Officer could be said to be following wrong procedures. In that case it could be said that the delinquent could have been advised to follow the correct procedure.

(iii). However, in charge No.1 there are two cases of bride burning wherein the delinquent granted bail for extraneous reasons which makes charge No.1 against him a serious one.

24. For the reasons stated above, it is not possible for us to accept the submissions of Mr.Anturkar that the impugned order was not called for in the facts of the case. This was not a case where legality of a Judicial Officer or propriety was being made subject of the Departmental Enquiry. What was under consideration was the conduct of the delinquent in passing the impugned orders. When such orders were passed in quick

succession, an inference had to be drawn and in any case, the High Court had to consider as to whether such an officer could be continued in service and whether such matters could be continued to be entrusted to him safely. We may as well refer in this connection to the order of the Apex Court in the case of **Bimla Devi vs. State of Bihar reported in (1994) 2 SCC 8** where provisional bail was granted by a Magistrate despite rejection of two bail applications earlier by the High Court. The Apex Court directed the High Court to take action against the Magistrate on administrative side. We do not think that the conclusion arrived at by the Enquiry Officer could be held to be uncalled for or in any case, perverse.

25. Before we conclude on this point, we must note that in all such matters of disciplinary proceedings, where the High Court examines under Article 226 as to whether the charges were proved in the Departmental Enquiry, we are not sitting in appeal. In the case of **The High Court of Judicature at Bombay vs. Shashikant S. Patil & anr. reported in AIR 2000 SC 22**, the Apex Court set aside the order of Division Bench of this Court on judicial side interfering with the

decision of the High Court on the administrative side. What the Apex Court observed in para-16 thereof is very material for our purpose and it reads thus:-

> " 16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/discplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if such authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, **is wholly arbitrary or capricious that no reasonable person could have arrived at** such a conclusion , or grounds very similar to the above. But we cannot overlook that the departmental

> authority (in this case the Disciplinary Committee of the High Court) is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that **if there is some legal evidence on which the findings can be based**, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution. "
>
> (Underlining supplied)

26. The second broad submission of Mr.Anturkar was that the impugned order was in breach of the governing rules. He thus submitted that Rule 9(2) of the MCS (Discipline and Appeal) Rules requires the Disciplinary Authority to consider the record of the enquiry and give its findings on each charge. According to him, since the order of the Disciplinary Authority is to be passed after considering the record of enquiry, its consideration has to be reflected in a reasoned order. The order must contain findings on each charge and they must be its own findings. This Rule 9(2) reads as follows:-

" **9. Action on the inquiry report.**

(1) . . . .

(2) The disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge. If it disagrees with the findings of the inquiring authority on any article of charge, it shall record its reasons for such disagreement. "

Mr.Anturkar submitted that a Full Bench of this Court had considered a similar provision in the case of **Anil Amrut Atre vs. District and Sessions Judge, Aurangabad reported in 2002 (3) Mh. L.J. page 750**. The Court was concerned with Rule 23(2) of the MCS (Discipline and Appeal) Rules. This relevant rule reads as follows:-

"**23. Consideration of appeal**.-

(1) ....

(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 5 of these rules or enhancing any penalty imposed under that

rule, **the Appellate Authority shall consider-**

(a) whether the procedure laid down in these rules has been followed, and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe, and pass orders -

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which had passed the order appealed against, with such directions as it may deem fit in the circumstances of the case:

Provided that

(i) ..

(ii) ..

(iii) ..

(iv) ..

(3) ..... " (Emphasis supplied) "

The Full Bench relied upon two judgments (1) in the case of **R.P.Bhatt vs. Union of India reported in (1996) 2 S.C.C. 651 and (2) Ram Chander vs. Union of India reported in (1986) 3 S.C.C. 103**. The Full Bench held that the expression "consider" will include within its sweep application of mind, personal hearing and recording of reasons. The Full Bench further held that it was obligatory on the Appellate Authority to apply its mind and to pass an appropriate speaking order after affording personal hearing to the delinquent. Mr.Anturkar relied upon this judgment for a limited purpose, namely, that the order has to be a reasoned order and in his submission, the order passed by the Disciplinary Committee of the High Court was not a reasoned order.

27. With respect to this expression "consider", Mr.Sawant referred us to the judgment of the Apex Court in the case of **State Bank of**

**Bikaner & Jaipur & others vs. Prabhu Dayal Grover reported in (1995) 6 S.C.C. 279**. In that matter, the Court was concerned with Regulation 70(2) which provided that the Appellate Authority has to consider whether the findings are justified or the punishment was excessive. The judgments in **R.P.Bhatt and Ram Chander** (supra) were pressed into service to submit that reasons had to be provided in the appellate order. In para-14, the Court observed as follows:-

> " 14. That brings us to the order of the appellant authority. Under Regulation 70(2), the appellate authority is required to consider whether the findings recorded against the officer concerned are justified and/or whether the penalty is excessive or inadequate and pass appropriate orders confirming, enhancing, reducing or setting aside the penalty or remitting the case to the authority which imposed the penalty or to any other authority with such directions as it deems fit in the circumstances of the case. This Regulation also does not obligate the appellate authority to give any reasons for its order. Assuming that by necessary

implication this Regulation also requires the appellate authority to give the reasons, still its order cannot be invalidated, as we find that it has discharged its obligation by considering the records and proceedings pertaining to the disciplinary action and the submissions made by Grover. In other words, the order clearly demonstrates that the appellate authority had applied its mind not only to the proceedings of the enquiry, but also the grounds raised by Grover in his appeal and on such application found that there was no substance in the appeal. "

28. On the same footing, Mr.Sawant submitted that though Rule 9(2) provides that the Disciplinary Authority shall consider the record of the enquiry and record its findings on each charge, the question is whether it is reflected from the order passed by the Disciplinary Authority or not. In his submission the order may be short one, but so long as one can draw an inference that the Disciplinary Authority has applied its mind and given its findings, nothing further can be insisted. The submission of

Mr.Anturkar is that the findings of the Disciplinary Authority must be on each charge. As far as this aspect is concerned, Mr.Sawant drew our attention to the judgment in the case of **Ram Kumar vs. State of Haryana reported in AIR 1987 S.C. 2043**. In para-8 thereof, the Apex Court observed as follows:-

> " 8. In view of the contents of the impugned order, it is difficult to say that the punishing authority had not applied his mind to the case before terminating the services of the appellant. The punishing authority has placed reliance upon the report of the Enquiry Officer which means that he has not only agreed with the findings of the Enquiry Officer, but also has accepted the reasons given by him for the findings. In our opinion, **when the punishing authority agrees with the findings of the Enquiry Officer and accepts the reasons given by him in support of such findings, it is not necessary for the punishing authority to again discuss evidence and come to the same findings as that of the Enquiry Officer and give the same reasons for the**

**findings.** We are unable to accept the contention made on behalf of the appellant that the impugned order of termination is vitiated as it is a non-speaking order and does not contain any reason. "

(Underlining supplied)

He pointed out that this judgment in the case of Ram Kumar (supra) was quoted with approval by a Bench of three Judges in the case of **Indian Institute of Technology vs. Union of India reported in 1991 Supp. (2) SCC page 12.** At the end of para-7 thereof, the Apex Court observed that the decision of the Board of Institute cannot be faulted for not giving detailed reasons particularly when it was made quite clear that the Board accepted the findings as well as the punishment proposed by the Enquiry Officer.

29. We have considered the rival submissions. To begin with, we must note that Rule 9(2) is concerned with the 'consideration' of the report of the Enquiring Authority by the Disciplinary Authority where the two authorities are different. They are both parts of the original decision in the Departmental Enquiry. On the other hand, Rule 23(2) deals with the 'consideration' while

exercising the appellate power. The judgments in **R.P.Bhatt, Ram Chander, Anil Atre** (all supra) on the one hand and one in the case of **State Bank of Bikaner (supra)** on the other were concerned with the 'consideration' by the Appellate Authority. Mr.Anturkar pressed into service the interpretation on the expression 'consider' in **Anil Atre's case** (supra) on Rule 23(2) to interpret the expression 'consider' occurring in Rule 9(2) whereas Mr.Sawant emphasized the judgment in **State of Bikaner** (supra) to submit that even in appeal giving of reasons need not be mandatory. He, however, emphasized the propositions in the cases of **Ram Kumar and I.I.T.** (supra). Both these judgments are on consideration at the original level.

30. However, much prior to the judgments in **Ram Kumar and I.I.T.** (supra), we have a judgment of the Constitution Bench of the Apex Court in **State of Madras vs. Srinivasan reported** in **AIR 1966 S.C. 1827** settling the law on this aspect. The respondent therein had been compulsorily retired on the charge of corruption and that order had been set aside by the Madras High Court. One of the submissions of the respondent's Counsel was that reasons were not given in the order passed by the Government. The observations of the Apex

Court on the requirement of giving reasons in the two situations viz. where the Government agrees with the findings of the enquiry and where it does not, appear in paragraphs 14 and 15. They are a clear pointer in this behalf. They are as follows:-

> " 14. Mr.Setalvad for the respondent attempted to argue that the impugned order gives no reasons why the appellant accepted the findings of the Tribunal. Disciplinary proceedings taken against the respondent, says Mr.Setalvad, are in the nature of quasi-judicial proceedings and when the appellant passed the impugned order against the respondent, it was acting in a quasi-judicial character. That being so, the appellant should have indicated some reasons as to why it accepted the findings of the Tribunal; and since no reasons are given, the order should be struck down on that ground alone.
>
> 15. We are not prepared to accept this argument. In dealing with the question as to whether it is obligatory on the State Government to give reasons in support of

the order imposing a penalty on the delinquent officer, we cannot overlook the fact that the disciplinary proceedings against such a delinquent officer begin with an enquiry conducted by an officer appointed in that behalf. That enquiry is followed by a report and the Public Service Commission is consulted where necessary. Having regard to the material which is thus made available to the State Government and which is made available to the delinquent officer also, it seems to us somewhat unreasonable to suggest that the State Government must record its reasons why it accepts the findings of the Tribunal. It is conceivable that if the State Government does not accept the findings of the Tribunal which may be in favour of the delinquent officer and proposes to impose a penalty on the delinquent officer, it should give reasons why it differs from the conclusions of the Tribunal, though even in such a case, it is not necessary that the reasons should be detailed or elaborate. But where the State Government agrees with the findings of the Tribunal which are against the

> delinquent officer, we do not think as a matter of law, it could be said that the State Government cannot impose the penalty against the delinquent officer in accordance with the findings of the Tribunal unless it gives reasons to show why the said findings were accepted by it. The proceedings are, no doubt, quasi-judicial; but having regard to the manner in which these enquiries are conducted, we do not think an obligation can be imposed on the State Government to record reasons in every case. "

31. In the present case, we are concerned with the 'consideration' at the level of original proceeding and not appellate. In an appeal there is a consideration by a higher authority and it could be said that it must be separately reflected in its order, though we are not concerned with that issue in the present matter. Rule 9(2) is split in two parts. Where the Disciplinary Authority differs with the Enquiring Authority, the second part provides that it shall record the reasons for disagreement and there is no escape therefrom since it is differing. However, where it is not so differing, the decisions in **State of**

**Madras vs. Srinivasan, Ram Kumar** and **I.I.T. (supra)** will hold the field. These judgments are on the consideration by the Disciplinary Authority at the original proceeding. Where the Disciplinary Authority concurs with the Enquiring Authority it cannot be said to be necessary for it to repeat and again discuss the same evidence and give same findings and reasons. This is because the Enquiring Authority and Disciplinary Authority are both parts of the same process at the original level. The sentence "The disciplinary authority shall, if it is not the inquiring authority, consider the record of the inquiry and record its findings on each charge" will have to be read as directory and not mandatory. The sentence " If it disagrees with the findings of the inquiring authority on any article of charge, it shall record its reasons for such disagreement" will have to be read as mandatory. The two parts of Rule 9(2) will have to be read accordingly. Therefore, it is not possible for us to say that the impugned order is not a considered order or does not consider the report of enquiry or does not record the findings of the Disciplinary Authority as required by Rule 9(2) or for that matter, it is bad for not recording its findings on each charge.

32. As far as the last submission concerning the hearing before the Disciplinary Authority is concerned, Mr.Anturkar submitted that what was contemplated was a personal hearing but fairly stated that it did not necessarily mean oral hearing, particularly where the show cause notice reflected acceptance of the report of the Enquiry Officer. That a personal hearing has to be given, cannot be disputed but that is advised when the Disciplinary Authority reaches a decision contrary to the favourable findings to the delinquent given by the Enquiry Officer. Otherwise, what is expected is an opportunity of hearing which cannot be insisted as included in the rule at the stage of the Disciplinary Authority where it concurs with the Enquiring Authority. This has been held by the Apex Court in the case of **J.A. Naiksatam vs. Prothonotary & Senior Master, High Court of Bombay & ors. reported in (2004) 8 SCC 653**. In the circumstances, no personal hearing could have been insisted at the stage of Disciplinary Authority. The representation made by the petitioner has been examined and a decision is arrived at after considering the same and this is reflected in the order of the Disciplinary Authority. That is fully in consonance with the rule and cannot be said to be in violation of the

principles of natural justice.

33. In the present case, therefore, we hold that fair and proper enquiry was held against the petitioner and the charges levelled against him have been proved in accordance with the governing rules. He has been directed to be compulsorily retired. He had completed more than 20 years of service on the date of the impugned order. The order of compulsory retirement cuts short his service but gives him retirement benefits which are, however, reduced as per the rules and in the circumstances of the case that is perfectly fair and justified. The nature of judicial service is such that it cannot afford to suffer continuance in service of a person who lacks in integrity. Hence, there is no reason to interfere. The petition is dismissed, though without any order as to costs.

**(H.L. GOKHALE, J.)**

**(S.P. KUKDAY, J.)**